

# Practitioners' expectations regarding mutual recognition

Mutual recognition of judicial decisions and confiscation  
15 years after Tampere: An additional tool for depriving  
criminals of their illicit assets all over the Union?

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# Approach

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## Practitioners'

- no homogeneous notion
- investigating and prosecuting judicial authorities
- trial judges and courts
- law enforcement authorities
- FIU and asset recovery personnel
- Eurojust, Europol
- MS' central authorities
- defence lawyers
- ...

## expectations regarding mutual recognition (MR)

- as it has been rolled out until date | evaluation of the MR *acquis*
- as it could/should (have) be(en) rolled out | missed & additional opportunities

## focused on tracing, recovery and confiscation of illicit assets

- in a broad sense | EU criminal policy beyond asset tracing, recovery and confiscation-specific instruments

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# Evaluation of the MR *acquis* | main characteristics

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building on (assumed) mutual trust

issuing state and executing state

- not merely a matter of new terminology

based on issuing/execution of

- order + certificate
- genuine “warrant”

full horizontalisation (inter-authority vs formerly inter-state)

stricter deadlines for execution

reduction of traditional exceptions

no more exequatur/conversion/locus-based procedure

- at least not initially (e.g. EAW and EC explanatory report)
- in the meantime: attitude has changed (e.g. custodial sentences)

no more dual criminality requirement

- for standardised list 32 offence types
- according to definition issuing MS (+ punishable there 3y+)
- in the meantime: attitude has changed (e.g. EEW + variations)

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# Evaluation of the MR *acquis* | per domain | 1

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## extradition

- FD European arrest warrant (EAW)
- FD pre-trial supervision order

## mutual assistance in criminal matters

- FD European Freezing Order (Evidence)
- FD European Evidence Warrant (EEW)
- Directive European Investigation Order (EIO)

## transfer of proceedings

- no progress whatsoever (coordination of prosecutions)

## overall (revision adopted FD's)

- FD decisions *in absentia*

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# Evaluation of the MR *acquis* | per domain | 2

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## transfer of the enforcement of foreign judgements

- FD financial penalties
- FD European Freezing Order
- FD confiscation orders
- FD custodial sentences
- FD probation measures and alternative sanctions
- FD taking account of convictions
  - FD organisation/content exchange CRI
  - ECRIS decision

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# Missed & additional opportunities | 1

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dual criminality bubble

EU cooperation rendered more difficult | contradiction in terms

- extraterritoriality & immunity exceptions | erroneously introduced, need to be removed
- MR as a legitimisation for trust-building procedural guarantees and legal remedies | new hindrances?

imbalance between judicial and police (law enforcement) cooperation  
| integrated approach required

- law enforcement authorities | MR of law enforcement decisions, beyond principle of availability and 2006 Swedish FD, EPRIS
- police and judicial authorities | *ratione auctoritatis* exceptions or hindrances, no cross-border operational investigative powers beyond JITs, new *aut exequi aut tolerare* principle?

MLA | no breakthrough for free movement of evidence with EIO

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# Missed & additional opportunities | 2

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## Eurojust, Europol

- proposal for regulations, choosing the best place for prosecution, cooperation between both, access to ECRIS

legal persons | despite 2006 FD MR confiscations and preparatory study (*infra*) , further step required

disqualifications in criminal matters | still no EU policy despite preparatory study (*infra*), breakthrough especially required in procurement sphere

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## Liability of legal persons for offences in the EU

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(JLS/2010/JPEN/PR/0009/E4)



## 45

## The disqualification triad

Approximating  
legislation  
Executing requests  
Ensuring equivalence

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# Disqualifications | The triad

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flexible system

approximating legislation

- certain behaviour (approximated) may be required to prompt a certain disqualification in all MS
- can be made trackable in ECRIS/EULOCS

executing requests

- MS to where a person moves, may be required to recognize a disqualification imposed in a MS where it is no longer felt by the person concerned, if the latter MS requires so
- = mutual recognition as in FD probation orders and alternative sanctions

ensuring equivalence

- quite comparable with FD taking account of prior convictions
- in that MS would be required to give at least equivalent disqualifying effects to foreign convictions and disqualifications
- being allowed to go further if they choose to do so in their domestic legislation (examples)
- by requiring certificates of non prior conviction or disqualification in both public and private employment, procurement and contractual relations

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# Missed & additional opportunities | 3

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## CoE

- invalidity of the EU-CoE trust divide + pay more attention to CoE framework, or export EU acquis, Azerbaijan contradiction world
- global cooperation, especially considering asset sharing agreements between EU as a whole and third countries, ideally regions (e.g. EU-LECs, development cooperation-based)

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# Questions and discussion

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